

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

FERDINAND RIVERA and CRISTINA
RIVERA,

No. C 10-04538 WHA

Plaintiffs,

v.

**ORDER REMANDING ACTION
TO STATE COURT**

ONEWEST BANK, FSB,

Defendant.

Plaintiffs filed this action in state court, alleging seven state-law claims. Defendant MortgageIt Inc. removed the action on October 7, 2010. The notice of removal stated “Plaintiffs [sic] claims appear to be based upon alleged violations of federal statutes . . .” even though plaintiffs did not state any federal claims. Only two defendants, MortgageIt Inc. and OneWest Bank, FSB, were served with the complaint or not dismissed prior to removal. OneWest Bank filed a joinder to MortgageIt’s notice of removal.

MortgageIt noticed a motion to dismiss for a hearing on December 16. OneWest Bank filed a joinder to the motion. Meanwhile, plaintiffs noticed a motion to remand for a hearing on December 9. Plaintiffs dismissed MortgageIt from the action on November 17, and on November 19 MortgageIt filed a notice of withdrawal of its motion to dismiss. In the interim, OneWest Bank did not file an opposition or statement of nonopposition to plaintiffs’ motion to remand, which was due on November 18, 2010, pursuant to Civil Local Rule 7-3.

1 Nevertheless, by prior order OneWest Bank was given a second opportunity to oppose the
2 motion to remand. That order set several new deadlines. *First*, given that MortgageIt, the
3 moving party with regard to the motion to dismiss, withdrew the motion, OneWest Bank was
4 required to update its submissions in support of the motion, stating in particular what portions
5 thereof still apply to it. It was given until November 29, at 5:00 p.m., to do so, but it did not do so
6 and still has not done so.

7 *Second*, the order clarified the schedule with regard to both the motion to dismiss and the
8 motion to remand, setting *both* hearings for December 16. Oppositions to both motions were due
9 on December 3, at 5:00 p.m. As stated, OneWest Bank did not file an opposition to plaintiffs'
10 motion to remand by its original deadline. It also did not file an opposition (or statement of
11 nonopposition) when it was given a new opportunity to do so. And it still has not done so.

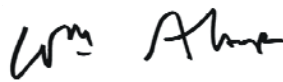
12 A defendant may remove a civil action from state court to federal court if original
13 jurisdiction would have existed at the time the complaint was filed. 28 U.S.C. 1441(a). The
14 strong presumption against removal jurisdiction means that a defendant bears the burden of
15 establishing proper removal. "Federal jurisdiction must be rejected if there is any doubt as to the
16 right of removal in the first instance," such that courts must resolve all doubts as to removability
17 in favor of remand. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir. 1992).

18 Neither MortgageIt's notice of removal nor OneWest Bank's joinder were based on
19 anything other than the following: "Plaintiffs [sic] claims appear to be based upon alleged
20 violations of federal statutes . . ." This does not state a valid basis for jurisdiction of any kind —
21 no authority is provided for the notion that original jurisdiction exists. The parties are not
22 diverse. Removal was not proper and jurisdiction does not exist.

23 Therefore, the Clerk shall **REMAND** this action to Alameda County Superior Court. The
24 hearings on December 16 are **VACATED**.

25 **IT IS SO ORDERED.**

26
27 Dated: December 6, 2010.

28 

WILLIAM ALSUP
UNITED STATES DISTRICT JUDGE